

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL SHAWN ELKINS,

Petitioner,

v.

KARL HELD, Supervisor,
SALLEY TESS, Regional Supervisor
and DENISE SYMON, Administrator,

Respondents.

ORDER

11-cv-170-bbc

On July 7, 2011, I dismissed petitioner Michael Elkins's petition for a writ of habeas corpus under 28 U.S.C. § 2254, in which he contended that the Wisconsin Department of Corrections had failed to give him proper sentence credit under state law. I concluded that petitioner had failed to show that his rights under the United States Constitution or federal law had been violated. Dkt. #8.

Now before the court is petitioner's motion for reconsideration, in which he repeats his argument that the state has denied him proper sentence credit. The motion will be denied. Under Fed. R. Civ. P. 59, any motion to alter or amend the judgment must be filed within 28 days of the entry of judgment. Petitioner's motion for reconsideration is much

too late to be considered under Rule 59. It cannot be considered under Rule 60(b), which is not designed to address the a challenge such as the one petitioner is asserting. Harrington v. City of Chicago, 433 F.3d 542, 546 (7th Cir. 2006) (Rule 59(e) motion is permissible when there has been manifest error of law or fact; Rule 60(b) provides extraordinary remedy granted only in exceptional circumstances.).

Even if I could consider petitioner's motion, I would deny it. As in his initial petition, petitioner has failed to explain how the state's failure to provide him sentence credit under state law violates any right he has under the Constitution.

ORDER

IT IS ORDERED that petitioner Michael Elkins's motion for reconsideration, dkt. #11, is DENIED.

Entered this 16th day of November, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge